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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,000	01/28/2002	James Coleman	JAMES2001	2103

7590 12/01/2005

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EXAMINER

MISKA, VIT W

ART UNIT PAPER NUMBER

2841

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/056,000

Applicant(s)

COLEMAN, JAMES

Examiner

Vit W. Miska

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1,5-7,16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-4,8-14 and 18-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

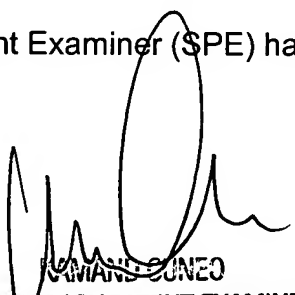
1. In view of the Appeal Brief filed on 9/8/2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
ROMAN SUNE0  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2300

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5, 7 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by the new patent cited to Hoie. Regarding claims 1 and 16, the reference discloses a water feature including vessel having a body 1 containing a volume of water (col. 2, line 8), inlet 2a, outlet 4, inlet 2a arranged tangentially to the vessel body (col. 2, lines 43-44) to impart rotational movement to the body of water and forming a vortex (col. 2, line 44), controller B,C D for controlling the rate of water inlet in comparison to the water outlet to vary the height of water in the vessel over time. The variation in the rate of water inlet is described at col.2, lines 31ff: "The spigot A is opened, the spigot B is opened for filling the mixing tank 1 to the desired level, and then the spigot D in the outlet conduit 4 is opened..."

3. With respect to claim 5, a downstream portion 9 is shown as having a greater diameter than that of drain port 4.

4. Vessel 1 is illustrated in Figs. 1 and 2 as a cylindrical tube of circular cross section, as in claim 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoie.
6. With respect to claim 6, a lid for vessel 1 is not disclosed in the reference. However, one of ordinary skill in the art would recognize that a lid therefor could be provided as a means to prevent spilling of the contents resulting from the turbulence created by the vortex.
7. The method steps recited in claim 17 are not specifically described by Hoie. However, at col. 2, lines 50-59, patentee describes operation of the system after vessel 1 has been filled to the desired level, wherein spigots B,C are "regulated to maintain the desired water level in the tank during the subsequent mixing and spraying of the admixed components". Therefore, when spigots A,B,C,D are initially opened for continuous flow, the water level is increasing to the desired level and the rate of

introduction of the water exceeds the rate of draining. Thereafter, spigot B may be regulated as suggested to change the water level, or reduce the rate of introduction to the vessel such that the rate of draining exceeds the rate of introduction. One of ordinary skill in the art would, therefore, have a suggestion for varying the rates of draining and introduction of water as claimed for achieving the desired water level.

8. Claim 16 is further rejected under 35 U.S.C. 102(b) as being anticipated by the German patent to Kopenig ('648). The reference discloses vessel with body 3, tangential inlet A-A (Fig. 1) creating a vortex 6, causing the volume of water to vary in height over time as described in the abstract: "the vortex collapses and the pool empties completely; the process begins again".

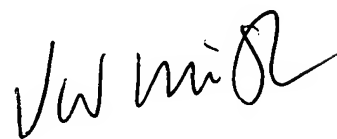
9. Claim 15 is allowed.

10. Claims 2-4, 8-14 and 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, K. Cuneo can be reached on 571-272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vit Miska  
Primary Examiner